THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.9702 of 2005

Date: September, 2007

Between :-

Ch. Jaganmohan Rao .. Petitioner

And

The State of A.P. rep. By its Commissioner,
Endowments Department, Hyderabad
And 2 others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.9702 of 2005

ORDER:-

On 27-4-2005 this Court issued *rule nisi* and in W.P.M.P.No.12665/2005 this Court made the following

Order:-

"Pending disposal of W.P.No.9702/2005, there shall be interim stay as prayed for."

W.V.M.P.No.2360/2006 filed to vacate the interim order granted in W.P.M.P.No.12665/2005 in W.P.No.9702/2005 dt.27-4-2005 and pass such other suitable orders.

Heard Sri S.Surya Prakasha Rao, the learned Advocate representing the writ petitioner and the learned A.G.P. for Endowments.

At the request of the Counsel on record, the Writ Petition itself is being disposed of finally.

The writ petitioner Ch.Jaganmohan Rao, filed the present Writ Petition for a Writ of Mandamus directing the respondents to execute and register sale deeds in respect of plots No.5 and 36 in S.No.9, Nidubrolu village, Ponnur Mandal, Guntur District belonging to Sri Chennakesavaswamy Temple, Nidubrolu village, in favour of the petitioner or his nominees after receiving balance of bid amounts without insisting on payment of interest and to pass such other suitable orders.

It is stated that the petitioner is the resident of Ponnur town, Guntur District and the 3rd respondent – the Executive Officer, Sri Chennakesavaswamy Temple, Nidubrolu village, Ponnur Mandal, Guntur District had issued public notice on 5-5-2002 proposing to sell by public auction balance of 6 plots in approved layout in land situated in survey No.9 belonging to Sri Chennakesavaswamy Temple in Nidubrolu village,

Ponnur Mandal, Guntur District and other plots were already auctioned earlier. It is also stated that the auction of 6 plots took place on 18-5-2002 and the petitioner was the highest bidder for plot No.5 and plot No.36. It is further stated by the petitioner that the bids in his favour for plot No.5 was knocked down for Rs.4,40,000/- and bid of plot No.36 was knocked down for Rs.4,25,000/- and as such the petitioner paid 1/3rd of bid amount for two plots amounting to Rs.1,46,000/- and Rs.1,42,000/- respectively. It is also stated that the Executive Officer issued proceedings bearing No.Rdis.No.M2/32736/94, dated 21-8-2002 declaring that the petitioner was the highest bidder for plots No.5 and 36 and that they received 1/3rd of the bid amount. It is also further stated that the Executive Officer directed the petitioner to pay the balance of the bid amounts and get registration done in his favour. It is also stated by the petitioner that the Executive Officer later issued two proceedings for two plots bearing letter No.Nil/2002 dated 20-11-2002 informing that the Commissioner, Endowments Department, Hyderabad had approved bids for two plots in his favour and confirmed the bid amounts. It is also further stated that the petitioner submitted a representation to respondent No.3 requesting him to execute and register the sale deeds of two plots in favour of petitioner's daughter Smt.Ch.N.Laxmi Saraswathi and his grand son N.Manikanta Rao as his nominees. It is further stated that the respondents have been executing the sale deeds of plots and registering in favour of the

nominees of the highest bidders and the proceedings bearing No.2/33736/94, dt.21-6-99 of Deputy Commissioner, Endowments, Guntur show that sale deeds of plot No.s 4, 6, 7, 10, 11, 14, 25, 33, 34, 35 and 39 in S.No.9 of Nidubrolu village were executed in favour of the nominees of highest bidders and that the Commissioner of Endowments had approved such procedure in his order No.M2/33736/94, dt.21-6-99, but the request of the petitioner for registration of the plots in favour of his nominees was rejected by the Executive Officer in his notice No.NIL/2003, dt.8-10-2003 and 13-11-2093. It is also stated that the Executive Officer stated in above letters that the Commissioner of Endowments, Hyderabad directed the Executive Officer to register the plots in favour of the petitioner only and not in favour of his nominees and there was no explanation for this inconsistent stand of the Commissioner of Endowments. It is further stated that the rejection of his request without assigning any reasons was wholly arbitrary and discriminatory. It is also further stated by the petitioner that the Executive Officer insisted in his letter No.NIL/04, dt.15-12-2004 to get the plot registered in his name and pay interest at rate of Rs.2/- per month on Rs.4,40,000/- and Rs.4,25,000/- within 3 days of receipt of the said notice. It is further stated that the petitioner got issued legal notices on 22-12-2003 and 15-12-2004 demanding to execute sale deeds in favour of his nominees as was done in other cases and also brought to the notice of the Executive Officer that there were encroachers in the plots

purchased by the petitioner and the Department had to give vacant possession to the petitioner and also got issued another notice to the Commissioner on 12-4-2005 and there was no reply from respondent No.1. It is further stated that the respondents had not changed their stand, the petitioner submitted a representation on 13-12-2005 agreeing for getting sale deeds executed and registered in his name. It is also stated that the petitioner also brought to the notice of the Executive Officer that the encroachers in the two plots vacated the plots recently and therefore the petitioner requested that the vacant plots No.5 and 36 be registered in his name but the Executive Officer is not prepared to register the plots in his favour unless the petitioner pay interest as demanded by the Executive Officer in his letter dt.15-12-2004. It is also stated that there was no provision for payment of interest in the notification of Executive Officer for auction and hence the demand of Executive Officer is wholly illegal and arbitrary and discriminatory. It is further stated that the plots were registered in the name of the nominees of highest bidders in the year 2000 also and the Executive Officer executed the sale deed bearing No.1190/2000, dt.19-2-2000 in respect of plot No.4 in S.No.9 in favour of Tirumalasetty Sanjeeva Rao and that the insistence of the respondents in a different way in case of the petitioner and demand for payment of interest by the respondents is also illegal and arbitrary. In such circumstances, it is stated that the writ petitioner having no other option, approached this Court praying for appropriate reliefs

under Article 226 of the Constitution of India.

In the counter affidavit filed by 2nd respondent, it is stated that the 3rd respondent temple is the absolute owner of the land which was sold away in public auction, after obtaining necessary permission from the Commissioner, Endowments Department, A.P., Hyderabad in Rc.No.M2/32736/1995, dt.4-1-96 as envisaged under Section 80(1) of the Endowments Act 30/87. It is also stated that the petitioner became the highest bidder for plot No.s 5 and 36 for a highest bid of Rs.4,40,000/- and Rs.4,25,000/- respectively and the petitioner also paid 1/3rd of the bid amount of Rs.1,14,000/- respectively as per the auction conditions. It is further stated that the said proposals of auction sale was confirmed in favour of the petitioner by the Commissioner, Endowments Department, A.P., Hyderabad in L.Dis.No.M2/33736/1994, dt.21-8-2002. It is also further stated that soon after receipt of sale confirmation order the petitioner was requested to make the payment of the balance 2/3rd amount to the temple and get the registered sale deed. It is further stated that as per the auction condition No.6 the highest bidder has to pay the balance 2/3rd amount within 15 days from the date of receipt of the notice of confirmation of the auction, but the petitioner failed to comply with the auction conditions and failed to pay the remaining 2/3rd amount and get register the sale deeds and as such the temple suffered a loss financially and lost interest on the balance

sale proceeds. It is also stated that the petitioner came forward with a request to register the plots in his favour. It is further stated that the 3rd respondent temple is always ready to register the Plot Nos.5 and 36 in favour of the petitioner afterpaying balance sale proceeds together with interest @ 24% per annum from the date of his default i.e., 15 days after the communication of the sale confirmation to him. It is also stated that there is legal provision to make payment of penal interest in case the purchaser causes delay in getting the sale deed executed for his intentional delay, and for causing the financial loss and inconvenience to the public temple. In view of the above facts, the demand of the 3rd respondent is not illegal, arbitrary and discriminatory. It is further stated that the petitioner has not filed any revision against the orders issued by the Commissioner, Endowments Department, A.P., Hyderabad, rejecting his plea to register plot Nos.5 and 36 in favour of his nominees and therefore the Writ Petition is not maintainable and shall be liable to be dismissed since there is an alternative remedy provided under Section 93 of the Endowments Act 30/87, to the petitioner and only after the availment of the alternative remedy, he has to approach the Hon'ble Court. It is also further stated that as per condition No.6 of the auction conditions dt.18-5-2002, the highest bidders have to pay the 2/3rd of the sale proceeds, soon after communication of sale confirmation order within the time as prescribed. It is further stated that as per auction condition No.11, the

highest bidder shall not violate the auction conditions under any circumstances and if he resorted to any such violation, then the temple has a right to cancel the said auction and forfeit the amounts paid by the highest bidder and would put the land again in public auction and if any loss is occurred the same would be collected from the previous highest bidder. It is also stated that the petitioner violated the said condition No.6 and failed to pay the balance 2/3rd amount of the sale consideration and on the other hand, he is taking shelter under lame excuses. It is also stated that the petitioner wantonly avoided to pay the balance amounts and if he has got any bona fides he would have paid the balance sale amount first as per auction conditions and then he might have seek for registration of the plots in the name of his nominees, but without fulfilling the auction conditions, the petitioner cannot claim any relief before the Hon'ble Court and it is only aimed at causing loss to the 3rd respondent public temple. It is also further stated that as the petitioner failed to comply the same and violated the auction conditions and as such the sale confirmation orders can be cancelled duly forfeiting the amount. Hence, on the above ground also, the Writ Petition is not maintainable and be dismissed in limini.

In the light of the respective stands taken by the parties, several of the facts are not in controversy. In the light of the averments made in the affidavit filed in support of the Writ Petition, this Court is of the considered opinion that the direction prayed for by the petitioner as such

without insisting on the payment of interest cannot be sustained, especially in the light of the specific averments made in the counter affidavit specified supra. In view of the same, the Writ Petition is disposed of directing respondents to execute registered sale deeds in respect of plot No.s 5 and 36 in Sy.No.9, Nidubrolu village, Ponnur Mandal, Guntur District belonging to Sri Chennakesavaswamy Temple, Nidubrolu village in favour of the petitioner or his nominees, after receiving the amounts with interest at 24% per annum, from the date of default, within a period of six weeks from the date of receipt of this order, in default, the respondents are at liberty to further proceed with the subject matter of the Writ Petition in accordance with law.

With the above directions, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

21st September, 2007

Note: L.R. Copy to be marked (YES / NO)

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